

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.201 OF 2003

Vinodchandra J. Sheth, C.A. Of
Smt.Pushpa Shivayogi Mandakki.

... Petitioner.

vs.

M/s.S.Kumars.Com Ltd.

... Respondent.

Petitioner in person present.

Mr.M.N.Ramlingaiah, for Respondent.

CORAM: D.K.DESHMUKH,J.

DATED: 19th April,2005

P.C.:-

1. A preliminary objection is raised regarding maintainability of the petition on the ground that the claimant had received the amount which was payable to the claimant by the respondent under the Award. According to the respondent, the amount which was payable to the claimant under the Award

was sent to the claimant alongwith letter dated 10th April,2003 by a demand draft. The demand draft has been duly encashed by the claimant without any reservation. A reply has been filed on behalf of the claimant. Paragraph no.3 of that reply is relevant which reads as under:-

“3. That I have received a Bank Demand Draft for Rs.29,057=00 under the cover of the letter dated the 10th April,2003 of the Respondent kept in an Envelope delivered to myself; but that I have not demanded this payment; and that this payment has been taken towards part payment of my claims against the Respondent;”

On behalf of the claimant the constituted attorney submits that this petition was lodged in the Court on 17th April,2003 and that the process of filing the petition was initiated even before the amount was received, and therefore, acceptance of the amount will not de-bar the petitioner from challenging the Award.

2. The learned Counsel for the Respondent has relied on the judgement of the Supreme Court in the case “Pooran Chand Nangia V. National Fertilizers Ltd.; JT 2003 (8) SC 273”, specially the following observations in paragraph no.3 of the Judgement which reads as under:-

“3. So far as the first question is concerned, it is not disputed that the appellant had received the money which was due to him

under the award and once the appellant had submitted to the award unequivocally and without reservation, it is not open to him to challenge the award.”

It goes without saying that the acceptance of the awarded amount without reservation would de-bar the claimant from challenging the Award. In order to examine the case of the claimant that because the process of filing of the petition was initiated before acceptance of money, the petition is maintainable, it is clear from the record that the money was sent with letter dated 10.4.2003. According to the affidavit of the respondent, the demand draft was sent on 12.4.2003 by speed post. In these circumstances, therefore, the date on which the demand draft was received by the claimant and the date on which that demand draft was encashed was within the special knowledge of the claimant and therefore, it was for the claimant to disclose that date. The conduct of the claimant of not disclosing the date on which the demand draft was received and the date on which it was encashed, makes the claimant liable for adverse inference to be drawn that the demand draft was received and encashed before lodging of this petition on 17th April, 2003. Thus, in view of the judgement of the Supreme Court, having been accepted the amount under the Award, the petitioner could not have filed the petition challenging the Award. It is pertinent to note that even in the affidavit dated 22.2.2005, the claimant does not say that she accepted the amount under protest and without prejudice to her rights to challenge the Award. What she states is that she received the amount

as part payment. Taking overall view of the matter therefore, in my opinion, the conduct of the petitioner of accepting the amount de-bars her from prosecuting the present petition, and therefore, the preliminary objection deserves to be upheld. It is accordingly, upheld. The petition is dismissed. The petitioner is directed to pay costs of this petition to the respondent as incurred by the respondent.
